



Application **GRANTED**. The initial conference scheduled for December 9, 2021, is **CANCELLED**. The proposed dates are so ordered. The parties shall file a status letter, including any proposed summary judgment briefing schedule, by January 21, 2022.

So Ordered.

Dated: December 3, 2021
New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

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December 2, 2021

VIA ECF

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *The New York Times Company et al. v. United States Central Command*, No. 21-cv-08297

Dear Judge Schofield:

I am counsel for plaintiffs The New York Times Company and its reporter Charlie Savage (jointly, “The Times”) in the above-captioned action brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I submit this joint letter on behalf of all parties pursuant to the Court’s October 18, 2021 Order (Dkt. No. 6). For the reasons set forth below, the parties respectfully submit that the conference scheduled for December 9, 2021, may not be necessary in light of the parties’ proposed schedule for further proceedings in this matter.

On October 7, 2021, The Times filed a complaint initiating this action against the United States Central Command (“CENTCOM”), a component of the Department of Defense (“DoD”). *See* Dkt. No. 1. Pursuant to FOIA, The Times seeks “the aerial footage of the August 29 drone strike in Kabul, starting five minutes before the drone began tracking the white car and ending five minutes after the strike.” *Id.* Venue and jurisdiction are proper because The Times’s principal place of business is in New York.

On November 10, 2021, the Government filed its answer to The Times’s complaint. *See* Dkt. No. 9. The Court scheduled an initial pretrial conference to be held at 10:30 AM on December 9, 2021. *See* Dkt. No. 6.

The parties have met and conferred concerning a schedule for further proceedings in this matter. CENTCOM advises that processing of the

requested record requires consultation with other components within DoD, including the Office of the Secretary of Defense and the Office of Inspector General, and additional time is needed to complete those consultations. Once CENTCOM has completed those consultations and issued a final determination in response to the FOIA request, the parties propose to meet and confer to determine whether any issues remain to be litigated and, if so, to propose a schedule for any motion practice.

Accordingly, the parties propose the following schedule:

- January 6, 2022: CENTCOM to provide determination and to release any part of the record deemed disclosable under FOIA.
- January 20, 2022: Deadline for parties to meet and confer as to whether cross-motions for summary judgment will be necessary.
- January 21, 2022: Parties to provide status report to the Court and propose a summary judgment briefing schedule if needed.

As this is a FOIA action, the parties anticipate that any legal issues will be resolved through cross-motions for summary judgment without discovery. *See, e.g., Wood v. Fed. Bureau of Investigation*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. Dep't of Just.*, 19 F.3d 807, 812–13 (2d Cir. 1994). Accordingly, the parties respectfully request that they not be required to submit the proposed case management plan and scheduling order called for in the Court's October 18, 2021 Order (Dkt. No. 6).

The parties respectfully submit that the conference currently scheduled for December 9, 2021, may not be necessary or would be more productive if rescheduled to a date convenient to the Court after January 21, 2022, the proposed date for the parties to provide a status report and proposed summary judgment briefing schedule, if needed. If the Court does not wish to adjourn the conference, however, counsel are prepared to appear on December 9 as scheduled.

We thank the Court for its consideration of this submission.

Respectfully submitted,

/s/ David McCraw

David McCraw

cc: All counsel of record (via ECF)